Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Improving Competitive Broadband Access to Multiple Tenant Environments	))	GN Docket No. 17-142

COMMENTS OF HORRY TELEPHONE COOPERATIVE, INC.

Horry Telephone Cooperative ("HTC"), by its counsel, submits the following comments in response to the above captioned Federal Communications Commission ("FCC" or the "Commission") *Notice of Inquiry*. In these comments, HTC addresses the impact that bulk billing arrangements have on broadband competition, or lack thereof, in multiple tenant environments ("MTEs") and the Commission's legal authority and responsibility to prevent the use of bulk billing to engage in anti-competitive practices. HTC urges the FCC to enforce existing rules and initiate a proceeding to strengthen its oversight on carriers that use bulk billing arrangements as a cover to gain a competitive advantage or to engage in anti-competitive behavior.

I. Introduction and Background

HTC is a rural telephone cooperative founded in 1952 for the purpose of providing communication services to citizens of Horry County, South Carolina. In 1983, HTC was granted a rural exemption to provide cable TV service. Today, HTC provides voice, video, data and wireless services to residents of most areas of Horry County as well as portions of Georgetown County, South Carolina. HTC's service area is geographically diverse – the eastern portion borders Myrtle Beach, a popular resort destination and growing metropolitan area, the center of

HTC's service territory is Conway, a small city and the county seat of Horry County, while the western portion of the county consists of rural and underserved areas. HTC has been forced to use bulk billing arrangements in direct response to bulk billing offers made from large competing service providers.

II. The Commission Should Prohibit Bulk Billing and Exclusive Marketing Arrangements That are Designed to Remove Competition.

a. Background

In general, the density provided by MTEs[1] are a valued business for telecommunications carriers and video providers. HTC supports the practice of bulk billing for the purpose of reducing consumer prices in settings with high turnover like hotels, apartments, student housing and hospitals. Bulk billing arrangements, which historically have been used with the provision of video services, have now been expanded to monopolize a variety of other communication services. These bulk billing arrangements usually require one hundred percent participation from the MTE members so that a single bill can be delivered to the management company, home owners association ("HOA"), or business owner. Fees for these services are usually collected from end users through the HOA. This one hundred percent participation, single bill delivery, and video programming agreements is what allows HTC and other providers to offer the discounts associated with MTEs. HTC is able to offer such a discount partially due to these requirements and partially because HTC's programming agreements allow HTC to reduce costs

[1] The FCC's definition of MTE includes gated communities and single family homes with a HOA. In HTC's experience, that definition is much broader than the term used in the bulk billing provisions of many programming contracts, which generally limits bulk rate discounts to multi-unit buildings.

in specific settings. As the Commission is aware, in most MTEs where there is no bulk billing, all services are billed directly to the homeowner at standard rates.

b. Large Carriers Have the Ability to Use Bulk Billing Agreements to Gain Market Share and to Engage in Anti-Competitive Behavior.

Recently, HTC has found that certain larger carriers have expanded the use of bulk billing and exclusive marketing agreements away from MTEs with high turnover, and toward single family home communities or subdivisions with HOAs. In these instances, bulk billing agreements are being used to lock more affluent communities into long term "bulk billing" service arrangements for multiple years at a time, effectively keeping competitors out or stranding a competitor's existing infrastructure investments. While the long-term agreements do not specifically prohibit a resident from also using the service of a competitor, it does so in effect. Requiring one hundred percent participation and having the services billed through the HOA fees discourages a homeowner from paying twice for the same service just to get it from a different provider. As a result, that second provider/competitor is also unlikely to invest in placing facilities or upgrading facilities in any neighborhoods that are subject to such a long-term bulk billing agreement. As time goes on, that second provider/competitor will no longer likely afford to offer any service to such communities or neighborhoods, thus thwarting competition and creating a monopoly. It stands to reason that once the second competitor has been eliminated from the market, future rates for similar services will be substantially higher.

As the media and telecommunications industry has consolidated, large companies have gained a competitive advantage to more effectively use these bulk billing practices to push out competition. Charter Communications ("Charter"), for example, has strategically targeted gated and single family home communities in the Myrtle Beach metropolitan area.[2] By offering single family communities represented by an HOA long term bulk billing contracts with pricing below costs for bundled broadband, voice and video services, Charter has effectively eliminated HTC's ability to compete in these communities for the foreseeable future.[3] HTC, which does not have the nationwide leverage to subsidize competitive markets and does not own content, cannot match Charter's below-market offers on broadband, and in some cases, is prohibited by contract from offering bulk billing discounts on video. In fact, many of HTC's existing video content contracts, including some contracts with content providers owned by HTC's video competitors, expressly prohibit bulk billing arrangements to single family residences. As nationwide video service providers acquire more content, the ability of local video operators to compete with "bulk billing" offers (video bundled with broadband, voice and/or other services in the future), becomes almost impossible.[4] Accordingly, HTC asks the Commission to re-visit the use of bulk

[2] Charter (formerly Time Warner Cable), offers service to the Myrtle Beach metropolitan area and to Conway, but not to the more rural areas which account for the largest land portion of Horry County. Charter has overbuilt HTC in approximately thirty percent (30%) of its service area, which accounts for approximately eighty percent (80%) of houses passed.

[3] For example, in one affluent single-family home community located just outside of Conway, SC, Charter has offered cable television (200 TV channels including Showtime and The Movie Channel), two (2) high definition set top boxes, high speed Internet with a modem and wireless router for only thirty-five dollars ($35) per month per household. The offer, which was accepted by the community, was contingent on one hundred percent (100%) participation of the community's homeowners and required a seven (7) year contract with a two-year rate freeze and up to five percent (5%) annual rate increase thereafter. For smaller telecommunications providers, that price is below the costs of programming alone. HTC has many other examples of such below cost offers made to single family home communities with HOAs in the Myrtle Beach area.

[4] The below-cost bulk billing offers HTC has seen in portions of its market have ramifications extending well beyond competing in more affluent single family communities. In fact, this kind of use of bulk billing arrangements threatens both HTC's provision of service to rural portions of the county, and discriminates against lower income residents that do not have the "luxury" of living in communities with HOAs.

billing arrangements to ensure that such practices are not used as a cover for larger carriers to gain market share, or worse, engage in anti-competitive behavior.

III. The Commission Has Ample Legal Authority to Ensure that Bulk Billing Arrangements are not Anti-Competitive.

The Commission has a responsibility to foster competition in local communications markets pursuant to the Telecommunications Act of 1996[5] ("Act") and is provided amble statutory authority to do so when market participants are behaving unjustly and anti-competitively. The Commission should use its authority under the Act to ensure that carriers do not use bulk-billing arrangements to engage in anti-competitive behavior. Pursuant to Section 706(a) of the Act, the Commission is directed to take "measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."[6] Additionally, Section 628(b) of the Act states that "it shall be unlawful for a cable operator… to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers."[7] As explained herein, HTC has seen first-hand how the use of bulk billing arrangements can hinder or prevent a competing multichannel video programming distributor ("MVPD") from providing cable and broadcast programming to consumers.

Although there is a current proceeding to reclassify broadband Internet as an information

[5] *See* 47 U.S.C. § 1302.

[6] Id.

[7] 47 U.S.C. § 548.

service currently pending at the FCC,[8] currently the law also bolsters the FCC's authority to prevent anti-competitive behavior engaged in by broadband providers. Section 201 of the Communications Act of 1934, as amended, for example, requires "all charges, practices… for and in connection with such communication service, shall be just and reasonable, and any such charge, practice… that is unjust or unreasonable is declared to be unlawful."[9] Additionally, Section 202(a) makes it "unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."[10] Accordingly, HTC urges the Commission to act now and going forward to use the Act and its existing rules to prevent companies from using bulk billing, or any other method, to engage in anti-competitive behavior to the detriment of consumers nationwide. The Commission should also initiate a formal rulemaking proceeding to further strengthen its rules preventing the use of such tactics to suppress and eliminate competitors.

IV. Conclusion

While originally beneficial to consumers in high occupancy, fast turnover MTEs, in HTC's market, bulk billing has now become a means to effectively push out and keep out

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[8] *See* Restoring Internet Freedom, WC Docket No. 17-108, Notice of Proposed Rulemaking, FCC 17-60, at 8, para. 24 (May 23, 2017).

[9] 47 U.S.C. § 201.

[10] 47 U.S.C. § 202.

competitors trying to serve more affluent communities with HOAs. HTC urges the Commission to enforce its existing rules and to initiate a proceeding to provide additional safeguards to prohibit telecommunications and video providers from using bulk billing arrangements as a cover to offer below-cost pricing in an attempt to hurt or eliminate competitors.

Respectfully Submitted,

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